

## **ITAT teaches basics to AO: Income earned by 'RNOR' from services rendered abroad wasn't taxable in India**

**Summary – The Delhi ITAT in a recent case of Shiv Puri, (the Assessee) held that where assessee was not ordinarily resident in India within meaning of section 6(6), income earned by him by setting up an investment fund outside India was not liable to tax in India**

### **Facts**

- The assessee was an individual. He was settled in USA. The assessee was non-resident in India in 9 out of 10 preceding years under consideration. He stayed in India for 331 days during 1-4-1998 to 7-9-2004.
- For relevant assessment year, the assessee claimed that he had received fee from services rendered in setting up an investment fund and arranging investors etc. abroad.
- The Assessing Officer took a view that said fee was income deemed to accrue or arise in India as per section 9(1)(vii)(c).
- Accordingly, Assessing Officer made an addition to the income of the assessee. The Commissioner (Appeals) confirmed the action of the Assessing Officer.
- On second appeal:

### **Held**

- The main issue involved in the appeal is whether the amount received by the assessee is taxable in the hands of the assessee as per provisions of the Act. As per section 5(1), the total income of a resident includes all income from whatever source which is received or deemed to be received in India or accrues or arises or deemed to accrue or arise to him in India or accrues or arises to him outside India.
- However, there is a proviso to this section which provides that in case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.
- A person is said to be not ordinarily resident in India in any previous year if such person is an individual who has been a non-resident in India in nine out of ten previous years preceding relevant year or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less.
- The assessee has submitted a working of days for which he has stayed in India from the previous years 1995-96 to 2004-05. It is clear from the chart that the assessee has been in India for 331 days for seven preceding years which is less than 729 days as stipulated in section 6(6).

- Thus, it is an established fact that the assessee status was of a 'Not Ordinarily Resident' (NOR) in India during the relevant period. This fact has been also recorded by Commissioner (Appeals). Once the status of the assessee is established as 'not ordinarily resident' (NOR), then the next issue comes for decision is whether the amount in question represented the income which accrued or arose to him in India or it is derived from business controlled in or profession set up in India.
- From the evidences submitted, it is found that the assessee has rendered services outside India in the form of setting up an investment fund in Mauritius.
- In view of these facts, it is held that the assessee rendered services in relation to setting up of fund in Mauritius and looked to find seed investors abroad. In view of this factual matrix, income in respect of services which were rendered outside India, accrues or arises to assessee outside India and it was not derived from business controlled in or profession setting up in India. Therefore, the assessee's case is covered by the proviso to section 5(1) and the income is not chargeable to tax in India.
- In the result, the appeal of the assessee is allowed.